

**TITLE 9. CALIFORNIA DEPARTMENT OF MENTAL HEALTH****ACTION: NOTICE OF PROPOSED RULEMAKING****SUBJECT: PATIENTS' RIGHTS AND RELATED PROCEDURES FOR NON-LPS
ACT PATIENTS IN DEPARTMENT OF MENTAL HEALTH FACILITIES**

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Mental Health (DMH) proposes to adopt the regulatory action described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

WRITTEN COMMENT PERIOD: Any interested person, or their authorized representative, may submit comments relevant to the action described in this notice. Any written statements, arguments, or contentions must be received by the Office of Regulations, California Department of Mental Health, 1600 Ninth Street, Room 150, Sacramento, CA 95814, by 5:00 p.m. on **July 2, 2002**. It is requested but not required that written statements sent by mail or hand-delivered be submitted in triplicate.

Comments may be transmitted via facsimile 916-654-2440 or electronic mail regs@dmhhq.state.ca.us and must be received before 5:00 p.m. on the last day of the public comment period. All comments, including electronic mail or facsimile transmissions, should include the author's name and U.S. Postal Service mailing address in order for DMH to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

PUBLIC HEARING: DMH will hold a public hearing commencing at 1:30 p.m. on **July 2, 2002**, in the Auditorium (Room 102) at 714 P Street, Sacramento, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest/Policy Statement Overview. DMH requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Reasonable accommodation or sign language interpreting services at a public hearing will be provided upon request. Such request should be made no later than 15 days prior to the close of the written comment period.

WEB SITE: This public notice, the regulation text, the initial statement of reasons, and other related documents, are available from the DMH world- wide-web site <http://www.dmh.ca.gov/Admin/regulations/rulemaking.asp>.

CONTACT: Inquiries concerning the rulemaking process described in this notice may be directed to Steve Appel, Chief, Office of Regulations, by electronic mail regs@dmhhq.state.ca.us or telephone 916-654-4027. The backup contact person is Linda A. Powell, Deputy Director, Administrative Services at 916-654-2378. Inquiries concerning the substance of the rulemaking may be directed to Angela Lazarow, Chief, Office of Human Rights at 916-654-2327.

Hearing impaired persons wishing to utilize the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 800-735-2929, if you have a TDD; or 800-735-2922, if you do not have a TDD.

PRE-NOTICE PUBLIC DISCUSSIONS: The Department did not involve members of the public in discussions prior to publication of this notice. The proposed regulations involve neither complex proposals nor a large number of proposals that cannot easily be reviewed during the comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: Section 5325 of the Welfare and Institutions Code (W&IC), sets forth patients' rights afforded to patients detained for evaluation and treatment pursuant to the Lanterman-Petris-Short (LPS) Act (Part 1 (commencing with Section 5000) of Division 5, W&IC). Article 6 (commencing with Section 860) of Chapter 4 of Division 1 of Title 9, California Code of Regulations (CCR) contains provisions regarding notification requirements, definitions, and complaint procedures applicable to LPS Act patients. Section 4027, W&IC, authorizes DMH to adopt regulations pertaining to patients' rights for inpatient treatment of non-LPS Act patients. In addition, Section 4005.1, W&IC authorizes DMH to adopt regulations necessary to carry out its duties under Division 4 (commencing with Section 4000), W&IC. This includes operation of the state hospitals under its jurisdiction.

This rulemaking adopts Chapter 4.5 in Title 9, CCR. Specifically, Chapter 4.5 commences with Section 880, and specifies non-LPS Act patients' rights, procedures for denial of rights, patients' complaint procedures, and patients' restrictions on clothing and Internet access. This approach is similar to the rights of and procedures for LPS Act patients; however, it takes into consideration the special safety and security precautions necessary for providing services to this non-LPS Act patient population.

The following summarizes the adoptions in Title 9:

Chapter 4.5. Patients' Rights and Related Procedures for Non-Lanterman-Petris-Short Act Patients in Department of Mental Health Facilities.

Article 1. General Provisions.

Section 880. Application of Chapter. This Section sets forth the application of the Chapter to non-LPS Act patients.

Section 881. Definitions, Abbreviations and Program Terms. This Section contains definitions of important terms.

Article 2. Patients' Rights.

Section 882. Notification of Patients' Rights. This Section specifies requirements for notifying patients of their rights.

Section 883. Patients' Rights. This Section specifies the patients' rights that may not be denied or limited, except in an emergency, or when documented and justified by the facility director, for safety and security reasons.

Section 884. Patients' Rights Subject to Denial for Good Cause. This Section sets forth the patients' rights that may be denied only for good cause and specifies the reasons and procedures for good cause denial.

Section 885. Patients' Complaint and Appeal Procedure. This Section establishes a complaint procedure for patients when they feel their patients' rights have been abused or unreasonably denied.

Section 886. Quarterly Reports to the Office of Patients' Rights. This Section specifies the reporting requirements for the denial of patients' rights.

Article 3. General Limitations Applicable to Non-LPS Patients.

Section 890. Clothing. This Section specifies that patients must possess and wear only authorized clothing.

Section 891. Patients' Internet Access. This Section specifically denies patient's access to the Internet for safety, security and treatment reasons.

Section 892. Operating Businesses From Within the Facility. This Section prohibits patients from conducting business activities within the facility.

PLAIN ENGLISH STATEMENT: These regulations have been written in plain English. They do not use confusing concepts, technical language, or terms with meanings other than those in any dictionary. People directly or indirectly affected by these regulations will be able to understand them without special experience or training.

AUTHORITY: Sections 4005.1 and 4027, Welfare and Institutions Code.

REFERENCE: Section 43.92, Civil Code; Section 13108, Health and Safety Code; Sections 1026, 1370, 2684, and 2960, Penal Code; Sections 4005.1, 4027, 5325(i), 5325.1, 5326, 5326.1, 5328, 5328(r), 5328.9, 5600.2(g), 6600 et seq., and 7232, Welfare and Institutions Code; and 42, CFR Sections 482.13(a)

ECONOMIC AND FISCAL IMPACT DISCLOSURES: The Department has made economic and fiscal determinations regarding the regulations, as follows:

LOCAL MANDATE DETERMINATION: The regulations would not impose a mandate on local agencies or school districts, nor are there any savings or costs for which reimbursement is required in accordance with Part 7 (commencing with section 17500) of Division 4 of the Government Code.

OTHER NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: This proposal does not impose non-discretionary costs or savings on local agencies.

FISCAL IMPACT ESTIMATE:

Fiscal Effect on Local Government: None

Fiscal Effect on State Government: Additional expenditures of approximately \$8,000 in the current State Fiscal Year. It is anticipated that the Department of Mental Health will be able to absorb this additional cost within its existing budget and resources.

Fiscal Effect on Federal Funding of State Programs: None

Fiscal Effect on Private Persons or Businesses Directly Affected: None

HOUSING COSTS: The regulations would not have effect on housing costs.

ECONOMIC IMPACT ON BUSINESS: The regulations would not have a significant statewide adverse economic impact on businesses or individuals, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT: The regulations would not significantly affect the following within the State of California:

- 1) The creation or elimination of jobs.
- 2) The creation of new businesses or the elimination of existing businesses.
- 3) The expansion of businesses currently doing business.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED:

The costs incurred for reasonable compliance with the regulations are insignificant.

IMPACT ON SMALL BUSINESS: The proposed regulatory action will not have an impact on small businesses as the rulemaking affects state mental health facilities only.

AVAILABILITY OF STATEMENT OF REASONS AND REGULATION TEXT: DMH has available for public review, the Initial Statement of Reasons for the regulations, all the information upon which the regulations are based, and the text of the regulations. Upon completion, the Final Statement of Reasons will also be available. Requests for any of these documents should be submitted to: The Office of Regulations, Department of Mental Health, 1600 Ninth Street, Room 150, Sacramento, CA 95814. This address is also the location of public records, including reports, documentation and other material related to the regulations. Additionally, these documents are posted on the DMH website: <http://www.dmh.ca.gov/Admin/regulations/rulemaking.asp>.

AVAILABILITY OF THE CHANGED OR MODIFIED REGULATION TEXT:

After considering all timely and relevant comments received, DMH may adopt the regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which DMH adopts the regulations. Any modifications will also be posted on the DMH web site. Requests for copies of any modified regulations should be directed to Steve Appel, Office of Regulations, at the address indicated above.

CONSIDERATION OF ALTERNATIVES: In accordance with Government Code Section 11346.5(a)(13), DMH must determine that no alternative considered by DMH would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than this action.

DEPARTMENT DOCUMENTATION: The Department relies upon specific documents in preparing this rulemaking, as follows:

1. Department of Mental Health: Changes in State Hospital Security Measures Can Reduce Annual Costs While Maintaining Public Safety (March 1998) by the California State Auditor (pages 17-20 and 25-27).
2. Statewide Hospital Security Study--Final Report (December 27, 1999)(pages 2-7, 2-9, 2-10, and 2-11).